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REPORT ON SEX-BASED DISCRIMINATION IN THE AMERICAN WORKPLACE
UNDER THE
INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS¹

In response to the

FOURTH PERIODIC REPORT
OF THE UNITED STATES OF AMERICA

Endorsed by:

A Better Balance

American Association of University Women San Francisco

Equal Rights Advocates

Legal Aid Society-Employment Law Center

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I. Executive Summary

Introduction and Issue Summary

In the United States, federal law prohibits discrimination based on sex in any aspect of employment, including, but not limited to, hiring and firing, assignment and promotion, training and development, and pay and benefits. In 2012 alone, the U.S. Equal Employment Opportunity Commission (EEOC) reported 30,356 cases filed for sex discrimination, or approximately 31% of the total cases filed.² Despite formal legal protections, research also shows that 68% of women believe sex discrimination exists in the workplace.³ Indeed, sex-based discrimination and inequities continue to pervade the American workplace which, in many ways, has failed to adapt to a 21st century workforce which is 47% women.⁴

Much workplace discrimination against working women results from implicit sex biases and institutionalized inequities that continue to make it harder for women to balance work and family responsibilities, to advance in the workplace and achieve positions of influence, to make a fair wage equal to that of their male peers, and to work in an environment free from harassment and abuse. Since many of these biases are not explicit, they can be difficult to challenge through litigation or to eradicate through legal prohibitions. As social norms take time to adjust for new ideas around sex roles and capabilities, the U.S. government has a responsibility to protect women from discrimination in the workplace and support them as they navigate their own way through a system complicated by stereotypes and outdated work environments.

Workforce and labor policies in the United States have stalled for working women, and in particular, for working mothers and caregivers. Over the past few decades, American households and the workforce have changed dramatically. As more and more women enter into the workforce, the one working parent, one housekeeper paradigm is no longer the dominant reality. In 2011, 58% of women were in the labor force, and the labor force participation rate of mothers with children under 18 years of age was 71% based on the U.S. Census.⁵ The percentage of women working or actively seeking employment grew steadily from the 1950s onward, peaking in 2000. Women today comprise 47% of the overall U.S. labor force.⁶ In 40% of all households with children under the age of 18, the mother is the sole or primary income provider for the family, and of these breadwinner mothers, 63% are single.⁷ This marks a significant change from just decades earlier, in 1969, when 44% of married women with children under 15 were stay-at-

² EEOC (2013). Charge Statistics: FY 1997 Through FY 2012. Retrieved August 21, 2013 from <http://www.eeoc.gov/eeoc/statistics/enforcement/charges.cfm>

³ Sex Discrimination and Sexual Harassment (2012). Catalyst. Retrieved August 21, 2013 from <http://www.catalyst.org/knowledge/sex-discrimination-and-sexual-harassment-0>

⁴ Bureau of Labor Statistics (2009). Current Population Survey. Retrieved August 21, 2013 from <http://www.pewsocialtrends.org/2009/10/01/the-harried-life-of-the-working-mother/>

⁵ U.S. Bureau of Labor Statistics (2013). Women in the Labor Force: A Databook. Retrieved August 14, 2013 from <http://www.bls.gov/cps/wlf-databook-2012.pdf>

⁶ Bureau of Labor Statistics (2009). Current Population Survey. Retrieved August 21, 2013 from <http://www.pewsocialtrends.org/2009/10/01/the-harried-life-of-the-working-mother/>

⁷ Wang, W., Parker, K., and Taylor, P. (2013). Breadwinner Moms. Pew Research Center. Retrieved July 31, 2013 from <http://www.pewsocialtrends.org/2013/05/29/breadwinner-moms/>

home moms.⁸ Additionally, nearly a third of hourly workers have elder care responsibilities, and nearly two thirds of these adults take time off of work for this purpose.⁹

With this tectonic demographic shift, it is simply not realistic to expect the same rigid schedules and policies to work for the 21st century workforce. And yet work-life balance and the right to request flexible schedules are just pipe dreams for most American workers. Family or caregiver-friendly workplaces in the United States are rare, despite laws such as the Americans with Disabilities Act, the Title VII of the Civil Rights Act of 1964, and the Fair Labor Standards Act. Even when good workplace policies exist, the “flexibility stigma” prevents many women from using or requesting them.¹⁰ A federally protected right to request flexibility is a necessary step to ensure a retaliation-free environment for working women seeking flexible schedules.

These sex-based inequities have been called into question before by the Human Rights Committee. Based on the second and third reports submitted by the United States, the Committee, in 2006, issued the following recommendation:

The Committee regrets that many federal laws which address sex-discrimination are limited in scope and restricted in implementation. The Committee is especially concerned about the reported persistence of employment discrimination against women (articles 3 and 26). The State party should take all steps necessary, including at state level, to ensure the equality of women before the law and equal protection of the law, as well as effective protection against discrimination on the ground of sex, in particular in the area of employment.¹¹

Since the issuing of this recommendation, some high level federal and state attention has been given to sex-based inequities in the workplace. Notably, the first bill signed into law by President Barack Obama following his inauguration in 2009 was the Lilly Ledbetter Fair Pay Act of 2009, a law which restored the right to sue for unequal pay when a woman discovered the discrimination. That same year, President Obama signed the Executive Order which established the White House Council on Women and Girls. In 2011, Secretary of State Hillary Clinton spoke at the first Women and the Economy Summit of the Asia Pacific Economic Cooperation Forum, where she pronounced the 21st century as the “Age of Participation” for women in the global economy. Most recently, on July 18, 2013, Minority Leader Nancy Pelosi and a cadre of Democratic representatives unveiled a new policy agenda that identifies both employment and social policies that will support economic security for working families, by eliminating barriers to equitable treatment and the advancement of women.

⁸ Kreider, R., and Elliott, D. (2010). Historical Changes in Stay-at-Home Mothers: 1969 to 2009. Retrieved August 22, 2013 from http://www.census.gov/population/www/socdemo/ASA2010_Kreider_Elliott.pdf

⁹ Williams, J. (2011). Improving Work-Life Fit in Hourly Jobs: An Underutilized Cost-Cutting Strategy in a Globalizing World. *WorkLife Law*, UC Hastings College of the Law. Retrieved August 21, 2013 from <http://www.worklifelaw.org/pubs/ImprovingworklifefitEmployerissuebrief.pdf>

¹⁰ Williams, J. Blair-Loy, M., and Berdahl, J. (2013). The Flexibility Stigma: Work Devotion vs. Family Devotion. *Rotman Magazine*. Retrieved August 22, 2013 from <http://worklifelaw.org/wp-content/uploads/2012/12/TheFlexibilityStigma.pdf>

¹¹ University of Minnesota Human Rights Library (2006). Concluding Observations of the Human Rights Committee on the Second and Third U.S. Reports to the Committee. Retrieved July 9, 2013 from <http://www1.umn.edu/humanrts/usdocs/hruscomments2.html>

Yet, despite the new policy focus on workplace inequities and the national attention given to high level female CEOs and executives like Marissa Mayer of Yahoo, Sheryl Sandberg of Facebook, and Meg Whitman of Hewlett-Packard, it is clear from the stereotype-filled public dialogue held around these women, from the experiences of all levels of American working women, from the countless reports of pay and leadership gaps, and from the persistence of the second shift paradigm for working mothers, that parity in terms of workplace fairness, expectations, and opportunities for advancement are still a long way away.

This report focuses on a few critical issues that contribute to and fuel ongoing disparities and inequities that impact women in the workplace, including sexual harassment; unequal pay for equal or comparable work; pregnancy discrimination, motherhood and caregiving penalties; outdated family leave policies; and the lack of access to flexibility and quality child care.¹²

Relevant Questions in the Committee’s List of Issues

In the March 2013 *List of Issues* drafted by the Human Rights Committee, the United States was *not* asked to clarify any recent steps taken to eliminate sex discrimination in the workplace. This report seeks to address this gap.¹³

U.S. Government Response

In the Fourth Periodic Report to the United Nations Committee on Human Rights concerning the ICCPR, the United States designated several paragraphs to sex-based discrimination in the workplace.¹⁴ Since 2009, the U.S. government has responded to the most enduring inequities that affect American women, including unequal pay, family leave, child care, discrimination based on pregnancy or caregiver status, workplace flexibility, high-paying STEM (science, technology, engineering, and math) jobs for women, and interagency coordination around these issues.

Around the issue of fair pay, the U.S. government highlighted the work of the U.S. Department of Labor Women’s Bureau whose vision is to “support all wage-earning women.”¹⁵ It also discussed the Lilly Ledbetter Fair Pay Act of 2009, an important first step towards protecting a woman’s right to file a claim for pay discrimination, and the federal government’s convening of the National Equal Pay Task Force, which brought together different agencies to provide recommendations on how best to eliminate the pay gap.¹⁶ The Fourth Periodic Report further outlined the available injustice and compensatory remedies for unequal pay, but did not deal with

¹² Not included in this report is the serious problem of sexual assault in the U.S. military. While relevant to the issue of workplace sex discrimination, the problem is complicated by issues of command responsibility and criminal liability, which go beyond the scope of this report.

¹³ United Nations Human Rights Committee (2013). List of issues in relation to the fourth periodic report of the United States of America. Retrieved August 18, 2013 from <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G13/430/58/PDF/G1343058.pdf?OpenElement>

¹⁴ U.S. Department of State (2011). Fourth Periodic Report of the United States of America to the United Nations Committee on Human Rights Concerning the International Covenant on Civil and Political Rights. Retrieved August 19, 2013 from <http://www.state.gov/j/drl/rls/179781.htm#>

¹⁵ Ibid. ¶ 115.

¹⁶ Ibid. ¶ 116.

the gaps brought about by unequal pay for comparable worth, or how the government planned to shape the minimum wage into a living wage for millions of American women.¹⁷

Importantly, the report also touched on employment discrimination based on pregnancy, highlighting the role of the U.S. Department of Justice in Pregnancy Discrimination Act litigation, as well as discrimination based on caregiver status.¹⁸ Pregnant women face additional barriers due to stereotypes around their physical abilities at work. Without federal law requiring employers to provide reasonable accommodations, pregnant women are often forced out of their jobs or face jeopardizing their health.

Since women disproportionately take on the role of caregiver for elderly parents or grandparents, disabled siblings and others without protection, they are open to similar discrimination and biases as pregnant women. While the EEOC's educational reports and the administration's working panels on work-life flexibility are critical first steps, these do not guarantee a caregiver's right to a workplace and hiring process free of discrimination. Sexual harassment in the workplace, a common form of sex discrimination, was also briefly discussed in the context of EEOC cases and enforcement.¹⁹

While the report highlights the critical Family and Medical Leave Act (FMLA), which allows for up to 12 week of *unpaid* leave following birth, adoption, or serious impairment or health condition, it does not mention the 40% of workers who are *not* covered by the law.²⁰ It also does not address how the United States will work to ensure paid leave so that it will no longer be one of only four countries in the world, including Liberia, Sierra Leone, and Papua New Guinea, that does not provide workers the right to paid maternity leave.^{21,22} Parents have described how a lack of paid leave and flexible work conditions jeopardized not only their health but also that of their children, and contributed to the sex-based leader and wage gap.²³ Paid maternity and parental leave are critical for ensuring a sex-responsive and fair work environment.

In conclusion, it is clear that sex-based workplace discrimination is on the radar of the U.S. government. Indeed, there have been several key victories on this front, from the Lilly Ledbetter Fair Pay Act to the creation of the White House Council on Women and Girls. Yet gaps in discrimination protections remain and persist to the detriment of women workers. This report

¹⁷ Ibid. ¶ 130.

¹⁸ Ibid. ¶ 121.

¹⁹ Ibid. ¶ 128.

²⁰ Sarna, M., Hegewisch, A., Hartmann, PhD., H. (2013). Balancing Work and Family: How Analyzing the Costs and Benefits of Work-Family Legislation Supports Policy Change. IWPR. Retrieved August 22, 2013 from <http://www.iwpr.org/publications/pubs/the-balancing-of-work-and-family-how-analyzing-the-costs-and-benefits-of-work-family-legislation-supports-policy-change>

²¹ Ibid. ¶ 131-132.

²² "One of the most common work-family supports, paid maternity leave, is practically universal: academic research covering 190 countries shows that as of 2011, 178 countries guarantee paid maternity leave under national law. In nine of the 190 countries, the status of paid leave for new mothers was unclear. Just three countries definitively offer no legal guarantee of paid maternity leave: Papua New Guinea, Swaziland—and the United States." *Failing its Families* (2011). Human Rights Watch. Retrieved August 21, 2013 from <http://www.hrw.org/node/96430/section/2>

²³ Ibid. "Parents with short and unpaid leaves described delaying immunizations and health care visits for babies; physical and mental health problems for parents; short periods or early cessation of breastfeeding and dismal conditions for pumping; financial hardship; debt; demotion; and denials of raises or promotions."

agrees with the 2006 conclusions by the Human Rights Committee that many federal laws which address sex discrimination in the workplace are limited in scope, implementation, and enforcement. The United States should address how it plans to improve upon its policies.

Recommended Questions

It is recommended that the Human Rights Committee ask the U.S. delegation to provide an update on:

- What measures the United States is taking to ensure equality for women in the workplace, and in particular, what the United States is doing to address persistent employment-related problems of sexual harassment, unequal pay for equal work, pregnancy discrimination, motherhood penalties, insufficient family leave policies, and the need for flexible work schedules
- What role the federal government can play in encouraging policies and practices in the private sector to decrease the incidence of discrimination and encourage a safe and retaliation-free route for reporting abuse at work.

Recommendations

To ensure that women are free from workplace discrimination, the U.S. government should:

- Continue to support the critical work of the U.S. Department of Labor Women's Bureau and the White House Council on Women and Girls, which are coordinating the efforts around and bringing much needed attention to the inequities facing working women and future working women
- Research potential avenues for ensuring paid maternity and paternity leave to American workers, like all other democratic, more economically developed countries (MEDC)
- Work to reauthorize the Child Care and Development Block Grant, pass the pre-kindergarten initiative in Obama's budget, and institute other child care initiatives in order to allow more mothers to return to work to support themselves and their families
- Ensure all workers can meet the demands of work and family life by adopting a federal right to request flexibility, known as the Flexibility for Working Families Act, a version of which has already been passed in the State of Vermont and is pending in San Francisco
- Pass the Pregnant Workers Fairness Act, reintroduced in 2013, to ensure that pregnant women get the basic accommodations necessary for an equal opportunity to work
- Approve the Paycheck Fairness Act which would require employers to prove that wage differences are related to legitimate business specifications and prohibit retaliation against employees who file wage discrimination claims, and allow victims to seek back and punitive damages for lost wages
- Pass the Fair Minimum Wage Act of 2013 to ensure that low wage women workers are able to earn a living wage.
- Pass the Employment Non-Discrimination Act (ENDA) to ensure equal protection for LGBT workers
- Amend Title VII of the Civil Rights Act of 1964 to adopt a broader definition of "supervisors" to hold employers accountable for preventing and correcting sexual

harassment in the workplace.

II. Introduction

This shadow report is submitted to United States Human Rights Committee by the San Francisco Department on the Status of Women, a local government agency, along with its endorsing partners to help inform the questioning of United States representatives at the 2013 International Covenant on Civil and Political Rights (ICCPR) review. The report focuses on a few key areas of concern regarding workplace discrimination against women occurring in violation of the United States' commitment to protecting the human rights guaranteed by the ICCPR. These areas include: sexual harassment, pay inequity, gaps between the sexes in leadership roles, pregnancy and caregiver discrimination, and inequitable access to flexible work schedules and quality child care.

III. United States ICCPR Commitment to Eliminating Workplace Discrimination Against Women

Relevant Articles of the ICCPR

The United States is accountable to the human rights standards set by the ICCPR, and of relevance here, Articles 3 and 26, which establish the basis for ensuring a workplace free of sex discrimination:²⁴

Article 3: The State Parties to the present Covenant undertake to ensure the equal rights of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

Article 26: All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, *sex*, language, religion, political or other opinion, national or social origin, property, birth or other status.

Relevant Questions in Committee's List of Issues

In the March 2013 *List of Issues* drafted by the Human Rights Committee, the United States was *not* asked to clarify any recent steps taken to eliminate sex discrimination in the workplace. This report seeks to address this gap.²⁵

²⁴ ICCPR Articles 3 and 26 (1966). Retrieved July 9, 2013 from www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx

²⁵ United Nations Human Rights Committee (2013). List of issues in relation to the fourth periodic report of the United States of America. Retrieved August 18, 2013 from <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G13/430/58/PDF/G1343058.pdf?OpenElement>

U.S. Government Response

In the Fourth Periodic Report to the United Nations Committee on Human Rights concerning the ICCPR, the United States designated many paragraphs to sex-based inequity in the workplace.²⁶ To its credit, since 2009, the United States federal government has taken on some of these enduring inequities that impact American women, including unequal pay, family leave, child care, discrimination based on pregnancy or caregiver status, workplace flexibility, promotion of high-paying STEM jobs for women, and interagency coordination around these issues.

In its response to the Fourth Periodic Report, around the issue of fair pay, the U.S. government highlighted the work of U.S. Department of Labor Women's Bureau, whose vision is to "support all wage-earning women."²⁷ It discussed the Lilly Ledbetter Fair Pay Act of 2009, a corrective step towards ensuring a woman's right to file a claim for pay discrimination, and the federal government's convening of the National Equal Pay Task Force, which brought together different agencies to provide recommendations to eliminate the pay gap.²⁸ The report also discussed the available injustice and compensatory remedies for unequal pay, yet failed to mention the gaps formed brought about by unequal pay for comparable worth.²⁹

The report also touched on discrimination in employment based on pregnancy, highlighting the role of U.S. Department of Justice plays in preventing pregnancy discrimination through litigation,³⁰ as well as discrimination based on caregiver status. Women disproportionately take on the role of caregiver for elderly parents or grandparents, disabled siblings, and others, and without protection, they are open to similar discrimination and biases as pregnant women. While the Equal Employment Opportunity Commission's (EEOC) educational reports and government panels on work-life flexibility are critical steps in the process for empowerment, these items do not go far enough to protect a caregiver's right to a workplace and hiring process free of discrimination. Sexual harassment in the workplace, another pervasive form of sex discrimination, was also discussed in the context of EEOC cases and enforcement.³¹

While the report does highlight the critical Family and Medical Leave Act (FMLA),³² which allows for up to 12 week of unpaid leave following birth, adoption, or serious impairment or health condition, it fails to address how the United States plans to correct for the fact that it is one of only four countries in the world—along with Liberia, Sierra Leone, and Papua New Guinea—that does not provide workers the right to paid maternity leave.

From this report, it is clear that sex-based workplace discrimination is on the radar of the U.S. government. While there have been several key victories on this front, from the Lilly Ledbetter Fair Pay Act to the creation of the White House Council on Women and Girls, several gaps in

²⁶ U.S. Department of State (2011). Fourth Periodic Report of the United States of America to the United Nations Committee on Human Rights Concerning the International Covenant on Civil and Political Rights. Retrieved from August 19, 2013 from <http://www.state.gov/j/drl/rls/179781.htm#>

²⁷ Ibid. ¶ 115.

²⁸ Ibid. ¶ 116.

²⁹ Ibid. ¶ 130.

³⁰ Ibid. ¶ 121.

³¹ Ibid. ¶ 128.

³² Ibid. ¶ 131-132.

discrimination protections remain that persist to the detriment of women workers. This report agrees with the 2006 conclusions by the Human Rights Committee that many federal laws which address sex-discrimination in the workplace are limited in scope, implementation, and enforcement. We hope that United States can address these concerns and offer a clear path for redress.

IV. Sex Discrimination in the American Workplace

In the United States, federal law prohibits discrimination based on sex in any aspect of employment, including, but not limited to, hiring and firing, assignment and promotion, training and development, and pay and benefits. In 2012 alone, the U.S. Equal Employment Opportunity Commission (EEOC) reported 30,356 cases filed for sex discrimination, or approximately 31% of the total cases filed.³³ Despite formal legal protections, research also shows that 68% of women believe sex discrimination exists in the workplace.³⁴ Indeed, sex-based discrimination and inequities continue to pervade the American workplace which, in many ways, has failed to adapt to a 21st century workforce which is 47% women.³⁵

Much workplace discrimination against working women results from implicit sex-based biases and institutionalized inequities that continue to make it harder for women to balance work and family responsibilities, to advance in the workplace and achieve positions of influence, to make a fair wage equal to that of their male peers, and to work in an environment free from harassment and abuse. Since many of these biases are not explicit, they can be difficult to challenge through litigation or to eradicate through legal prohibitions. As social norms take time to adjust for new ideas around sex roles and capabilities, the U.S. government has a responsibility to protect women from discrimination in the workplace and support them as they navigate their own way through a system complicated by stereotypes and outdated work environments.

Workforce and labor policies in the United States have stalled for working women, and in particular, for working mothers and caregivers. Over the past few decades, American households and the workforce have changed dramatically, as more and more women enter into the workforce, and the one working parent, one housekeeper paradigm is no longer the dominant reality. In 2011, 58% of women were in the labor force, and the labor force participation rate of mothers with children under 18 years of age was 71% based on the U.S. Census.³⁶ The percentage of women working or actively seeking employment grew steadily from the 1950s onward, peaking in 2000. Women today comprise 47% of the overall U.S. labor force.³⁷ In 40% of all households with children under the age of 18, the mother is the sole or primary income

³³ EEOC (2013). Charge Statistics: FY 1997 Through FY 2012. Retrieved August 21, 2013 from <http://www.eeoc.gov/eeoc/statistics/enforcement/charges.cfm>

³⁴ Sex Discrimination and Sexual Harassment (2012). Catalyst. Retrieved August 21, 2013 from <http://www.catalyst.org/knowledge/sex-discrimination-and-sexual-harassment-0>

³⁵ Bureau of Labor Statistics (2009). Current Population Survey. Retrieved August 21, 2013 from <http://www.pewsocialtrends.org/2009/10/01/the-harried-life-of-the-working-mother/>

³⁶ U.S. Bureau of Labor Statistics (2013). Women in the Labor Force: A Databook. Retrieved August 14, 2013 from <http://www.bls.gov/cps/wlf-databook-2012.pdf>

³⁷ Bureau of Labor Statistics (2009). Current Population Survey. Retrieved August 21, 2013 from <http://www.pewsocialtrends.org/2009/10/01/the-harried-life-of-the-working-mother/>

provider for the family, and of these breadwinner mothers, 63% are single.³⁸ This marks a significant change from just decades earlier, in 1969, when 44% of married women with children under 15 were stay-at-home moms.³⁹ Additionally, nearly a third of hourly workers have elder care responsibilities, and nearly two thirds of these adults take time off of work for this purpose.⁴⁰

With this tectonic demographic shift, it is simply not realistic to expect the same rigid schedules and policies to work for the 21st century workforce. And yet work-life balance and the right to request flexible schedules are just pipe dreams for most American workers. Family or caregiver-friendly workplaces in the United States are rare, despite laws such as the Americans with Disabilities Act, the Title VII of the Civil Rights Act of 1964, and the Fair Labor Standards Act. Even when good workplace policies exist, the “flexibility stigma” prevents many women from using or requesting them.⁴¹ A federally protected right to request flexibility is a necessary step to ensure a retaliation-free environment for working women seeking flexible schedules.

These sex-based inequities have been called into question before by the Human Rights Committee. Based on the second and third reports submitted by the United States, the Committee, in 2006, issued the following recommendation:

The Committee regrets that many federal laws which address sex-discrimination are limited in scope and restricted in implementation. The Committee is especially concerned about the reported persistence of employment discrimination against women (articles 3 and 26). The State party should take all steps necessary, including at state level, to ensure the equality of women before the law and equal protection of the law, as well as effective protection against discrimination on the ground of sex, in particular in the area of employment.⁴²

Since the issuing of this recommendation, some high level federal and state attention has been given to sex-based inequities in the workplace. Notably, the first bill signed into law by President Barack Obama following his inauguration in 2009 was the Lilly Ledbetter Fair Pay Act of 2009, a law which restored right to sue for unequal pay when a women discovered the discrimination. That same year, President Obama signed the Executive Order which established the White House Council on Women and Girls. In 2011, Secretary of State Hillary Clinton spoke at the first Women and the Economy Summit of the Asia Pacific Economic Cooperation Forum, where she pronounced the 21st century as the “Age of Participation” for women in the global economy.

³⁸ Wang, W., Parker, K., and Taylor, P. (2013). Breadwinner Moms. Pew Research Center. Retrieved July 31, 2013 from <http://www.pewsocialtrends.org/2013/05/29/breadwinner-moms/>

³⁹ Kreider, R., and Elliott, D. (2010). Historical Changes in Stay-at-Home Mothers: 1969 to 2009. Retrieved August 22, 2013 from http://www.census.gov/population/www/socdemo/ASA2010_Kreider_Elliott.pdf

⁴⁰ Williams, J. (2011). Improving Work-Life Fit in Hourly Jobs: An Underutilized Cost-Cutting Strategy in a Globalizing World. WorkLife Law, UC Hastings College of the Law. Retrieved August 21, 2013 from <http://www.worklifelaw.org/pubs/ImprovingworklifefitEmployerissuebrief.pdf>

⁴¹ Williams, J. Blair-Loy, M., and Berdahl, J. (2013). The Flexibility Stigma: Work Devotion vs. Family Devotion. *Rotman Magazine*. Retrieved August 22, 2013 from <http://worklifelaw.org/wp-content/uploads/2012/12/TheFlexibilityStigma.pdf>

⁴² University of Minnesota Human Rights Library (2006). Concluding Observations of the Human Rights Committee on the Second and Third U.S. Reports to the Committee. Retrieved July 9, 2013 from <http://www1.umn.edu/humanrts/usdocs/hruscomments2.html>

Most recently, on July 18, 2013, Minority Leader Nancy Pelosi and a cadre of Democratic representatives unveiled a new policy agenda that identifies both employment and social policies that will support economic security for working families, by eliminating barriers to equitable treatment and the advancement of women.

Yet, despite the new policy focus on workplace inequities and the national attention given to high level female CEOs and executives like Marissa Mayer of Yahoo, Sheryl Sandberg of Facebook, and Meg Whitman of Hewlett-Packard, it is clear from the stereotype-filled public dialogue held around these women, from the experiences of all levels of American working women, from the countless reports of pay and leadership gaps, and from the persistence of the second shift paradigm for working mothers, that parity in terms of workplace fairness, expectations, and opportunities for advancement are still a long way away.

Women continue to encounter discriminatory policies, opportunities, and expectations in the workplace in all areas of their working lives, from pay to leadership opportunities, health and safety to access to flexibility. This report will focus only on a few critical examples of workplace discrimination: sexual harassment; unequal pay for equal or comparable work; pregnancy discrimination, motherhood penalties, and disparities in family leave policies; and inequitable access to flexibility and child care.

Finally, while this shadow report focuses on discrimination against women, genderqueer and transgender individuals in America also face considerable workplace discrimination on the basis of their gender identity. A 2008 study by the National Center for Transgender Equality (NCTE) found that despite having attended college at the same or higher level as the general population, transgender individuals experienced unemployment at twice the rate and extreme poverty at four times the rate of the general population.⁴³ A full report on issues focusing on such genderqueer and transgender individuals is critical for truly unlocking all the failings of the United States to ensure civil and political rights to its citizens, regardless of gender, sex, or other social status.⁴⁴

a. Sexual Harassment

The U.S. Courts recognize sexual harassment as a form of sex discrimination, covered by Title VII Civil Rights Act of 1964, and defines it as the harassment of an applicant or employee that includes unwelcome sexual advances, requests, or verbal or physical harassment based on the harasser's sex.⁴⁵ Making conditions of employment contingent on sexual favors is a less common

⁴³ Harrison, J., Grant, J., and Herman, J. (2012). *LGBTQ Policy Journal*. A Gender Not Listed Here: Genderqueers, Gender Rebels, and OtherWise in the National Transgender Discrimination Survey. Retrieved July 18, 2013 from <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Harrison-Herman-Grant-AGender-Apr-2012.pdf>

⁴⁴ Not included in this report is the serious problem of sexual assault in the U.S. military. While relevant to the issue of workplace sex discrimination, the problem is complicated by issues of command responsibility and criminal liability, which go beyond the scope of this report.

⁴⁵ U.S. EEOC (2013). Sexual Harassment. Retrieved August 3, 2013 from http://www.eeoc.gov/laws/types/sexual_harassment.cfm

form of sexual harassment in the United States.⁴⁶ Some states, such as Illinois and Michigan, explicitly prohibit sexual harassment while others keep it couched within sex discrimination.⁴⁷

Today, many companies have workplace policies prohibiting and outlining disciplinary measures for sexual harassment in the workplace. And yet, despite the general improvement of work conditions for women, women continue to face sexual, verbal, or physical harassment in the workplace, contributing to the degradation of working women's psychosocial well-being, physical health, career advancement, and sense of self-worth.

While allegations of workplace sexual harassment from powerful men such as San Diego Mayor Bob Filner have captured recent headlines, women in all industries and at all payscales experience sexual harassment from colleagues, supervisors, or even non-colleagues in their work environments. In a 2011 poll, one in four American women reported having experienced workplace sexual harassment, compared to one in ten men.⁴⁸ In that same year, the EEOC received 11,364 charges of sexual harassment.⁴⁹

Sexual violence, including rape or sexual assault, also occurs too frequently in the American workplace.

Most cases of harassment and workplace sexual assault go unreported, for reasons such as fear of retaliation, self-blame, or a belief that reporting harassment will contribute negatively to the survivor's reputation. Women in workplaces, and especially in workplaces with a gender imbalance, often "go along to get along,"⁵⁰ in others words, a woman might be willing to take jokes or sexist insults so as to appear a team player, or in line with the company culture, which is often considered critical for career advancement. For the thousands of undocumented female workers in the United States, sexual assault or harassment is often considered "part of the job," and reporting the abuse has often lead to further abuse or threats of deportation.⁵¹

Women might also not report harassment because legal action is often unavailable in cases of single incidents, or unless the harassment is so severe or frequent to affect working conditions. Additionally, since employers might not fire the harasser, women might fear future work situations in an environment where she is known for reporting abuse, as women who report harassment have been shown to receive unjust treatment from colleagues. Regardless of the reason, in a culture where reporting abuse often leads to negative consequences for the survivor,

⁴⁶ RAINN (2013). Sexual Harassment in the Workplace. Retrieved August 6, 2013 from <http://www.rainn.org/get-information/types-of-sexual-assault/sexual-harassment>

⁴⁷ ABA (2013). Sexual Harassment. Retrieved August 3, 2013 from http://www.americanbar.org/groups/public_education/resources/law_issues_for_consumers/sexualharassment.html

⁴⁸ Langer, G. (2011). One in Four U.S. Women Reports Workplace Harassment. *ABC News*. Retrieved July 31, 2013 from <http://abcnews.go.com/blogs/politics/2011/11/one-in-four-u-s-women-reports-workplace-harassment/>

⁴⁹ U.S. EEOC (2012). Sexual Harassment Charges: EEOC & FEPAs Combined: FY 1997 - FY 2011. EEOC. Retrieved August 5, 2013 from http://eeoc.gov/eeoc/statistics/enforcement/sexual_harassment.cfm

⁵⁰ Larson, J. (2004). "Sexual Labor." *Directions in Sexual Harassment Law*. New Haven: Yale University Press. P. 131.

⁵¹ Gatlin, A. (2013). Female workers face rape, harassment in farm fields. *USA Today*. Retrieved August 7, 2013 from <http://www.usatoday.com/story/life/tv/2013/06/25/frontline-rape-in-the-fields/2455505/>

unreported harassment leaves the harasser free to continue harassing the same individual or others.

One important step the federal government should take is to amend Title VII of the Civil Rights Act of 1964 to adopt a broader definition of “supervisors” to hold employers accountable for preventing and correcting sexual harassment in the workplace.⁵²

b. Unequal Pay for Equal or Comparable Work

i. Unequal Pay

June 2013 marked the 50th anniversary of the Equal Pay Act, a critical law which prohibits sex-based wage discrimination. While some progress towards equal pay for equal or comparable work has been made, the pay gap continues to be a very real and pervasive phenomenon cutting across the American workforce, from top executive to entry level positions, and the next important policy step, the Paycheck Fairness Act, has stalled for a second time in Congress.

In 1963, when U.S. President John F. Kennedy signed the Equal Pay Act into law, women who worked full-time made \$0.59 on average for every dollar earned by men.⁵³ In 2012, due to progress in women’s education and increases in women’s workforce entry, women earned \$0.77 on the male dollar.⁵⁴ The wage gap has narrowed, but only by \$0.18, or less than half a cent per year.

This gap adds up considerably over time, and seriously impacts a woman’s lifetime earning potential. Economist Evelyn Murphy, President of the national Wage Project, estimates that over a lifetime, or approximately 47 years of full-time work, this gap amounts to a loss of \$700,000 for a high school graduate, \$1.2 million for a college graduate, and \$2 million for a professional school graduate.⁵⁵

Working women of color are at an even greater disadvantage due to the compounded effects of the sex and racial wage gaps. While a white woman makes \$0.81 on average for every dollar earned by a white man, an African American woman makes just \$0.68 and a Hispanic or Latina woman just \$0.59 for every dollar earned by a white man.⁵⁶

Working mothers in America suffer from an additional wage penalty, known as the motherhood penalty, which is thought to lead to a per-child wage penalty of approximately 5% on average

⁵² Many have called upon Congress (such as in the dissent by Justice Ruth Bader Ginsburg and Equal Rights Advocates) to overrule the Supreme Court case *Vance v. Ball State University* to clarify who counts as a “supervisor” for the purpose of holding employers responsible for unlawful harassment.

⁵³ National Committee on Pay Equity (September 2012). *The Wage Gap Over Time: In Real Dollars, Women See a Continuing Gap*. Retrieved July 16, 2013 from www.pay-equity.org/info-time.html

⁵⁴ National Partnership for Women & Families (April 2013). *San Francisco Women and the Wage Gap*. Retrieved July 16, 2013 from http://www.nationalpartnership.org/site/DocServer/Wage_Gap_SanFrancisco.pdf

⁵⁵ National Committee on Pay Equity (September 2012). *The Wage Gap Over Time: In Real Dollars, Women See a Continuing Gap*. Retrieved August 1, 2013 from <http://www.pay-equity.org/info-time.html>

⁵⁶ AAUS (2013). *The Simple Truth about the Gender Pay Gap*.

after controlling for other major occupational factors that affect wage.⁵⁷ The motherhood penalty comes about from biases in hiring, promoting, developing, and evaluating related to stereotypes about mothers, which are compounded with the general sex wage gap.

There have been some recent attempts to close this pay gap. In 2009, the first bill signed by the newly inaugurated President Obama was the Lilly Ledbetter Fair Pay Act which states that the 180-day statute of limitations for filing an equal-pay lawsuit would reset with each new paycheck affected by the compensation discrimination. This critical amendment to the Civil Rights Act of 1964 was particularly important since many women do not realize they are getting paid less than their male counterparts until years after receiving the first pay check affected by discrimination.

Additionally, this past year, the Paycheck Fairness Act was reintroduced into Congress with the intention of closing the gaps remaining after the Lilly Ledbetter Fair Pay Act. The Paycheck Fairness Act would close the loopholes in the Equal Pay Act, as it both prohibits retaliation against workers for discussing their salaries and affords women the same remedies available to those subject to racial or ethnic-based discrimination. Today, 50 years after the Equal Pay Act, it is clearer than ever that fully and finally closing this pay gap will require policy intervention and political will.

Finally, in 1981, the Supreme Court rules that Title VII covered wage discrimination whether or not the jobs were different, by 2007, courts ruled that comparable worth cases needed proof of intentional discrimination, which made it an almost impossible standard.⁵⁸ Although many states and municipal authorities have addressed this gap in pay equity, this gap persists for numerous reasons including sex segregation in certain sectors.

ii. Minimum Wage

Minimum wage is one of the critical, far-reaching issues that does not explicitly address women, but nevertheless, disproportionately affects them since women, and particularly multicultural women, are consistently relegated to the lowest paying jobs in America. The ubiquitous sex pay gap will not be closed, in other words, without addressing the dismally low minimum wage.

Last increased under the Fair Labor Standards Act (FLSA) in 2009, the current federal minimum of \$7.25 per hour has failed to keep up with inflation and increasing living costs. To help put today's low rate into perspective: when adjusted for inflation, the minimum wage in 1968 was approximately \$10 per hour. The federal minimum wage has effectively decreased, instead of increased, over four decades and in no way constitutes a living wage.⁵⁹ Across the United States, state and municipal minimum wage levels differ, ranging from the highest in San Francisco at \$10.55 (the California minimum wage is \$8.00 per hour), to \$5.15 in Wyoming for employers of

⁵⁷ Correll, S., Benard, S, and Paik, I. (2007). Getting a Job: Is there a Motherhood Penalty? *American Journal of Sociology*. Vol. 112, No. 5. P. 1297-1339.

⁵⁸ Lindemann, B., Grossman, P., & Weirich, C.G. (2007). *Employment Discrimination Law* (4th ed., Vol. I.), Washington, DC: BNA, pp. 1281-2).

⁵⁹ Matthews, D. (2013). Four things to know about Obama's minimum wage increase. *The Washington Post*. Retrieved August 3, 2013 from <http://www.washingtonpost.com/blogs/wonkblog/wp/2013/02/13/four-things-to-know-about-obamas-minimum-wage-increase/>

4 or more employees. In the United States, a covered employee is entitled to the higher minimum wage between the state and federal rates.⁶⁰

In the United States, tens of millions of low and minimum wage workers struggle to cover personal and family expenses with their minimum wage pay. A single parent working full-time under minimum wage would still be under the poverty threshold, meaning full-time minimum wage pay is far from enough to help a poor family sustain basic living standards. Two-thirds of these minimum wage workers are adults, contrary to popular belief, and two-fifths are the sole breadwinner for their family.⁶¹

Most importantly: the majority of these struggling providers are women. While women represent 50% of U.S. workers, they represent 56% of workers who would be affected by the potential minimum-wage increase. Overall, women make up nearly two-thirds of all full-time minimum wage workers, and nearly two-thirds of tipped workers, for whom the federal minimum cash wage is \$2.13 per hour plus tips.⁶² While the FLSA does require that employers cover the difference if tipped workers do not make at least minimum wage from tips, this requirement can be difficult to enforce and is not always complied with.

This tipped wage problem is particularly endemic to the restaurant industry, where hourly wages and inflexibility compound the difficulties for working women and mothers. A report recently released by the Restaurant Opportunities Center (ROC), a national organization dedicated to improving wages and working conditions for restaurant workers, outlined the dismal conditions of mothers in the restaurant industry. Women make up 50% of restaurant workers in the United States; mothers make up 20% of all workers, and half of those mothers are single.⁶³ According to the report, one third of all surveyed mothers working in the restaurant industry earned below the \$7.25 minimum wage, and these women on average spent 35% of their weekly wages on child care, leaving little for basic survival needs.⁶⁴ Further compounding the sex wage gap, female restaurant workers working full-time, year-round, typically earn \$0.79 for every dollar earned by their male co-workers.⁶⁵

This menial wage keeps low-income women who are disproportionately African American or non-White Hispanic in a cycle of poverty and day-to-day survival, from which even education and “hard work” may not help them escape.⁶⁶ Providing women workers with a living wage that accurately reflects true costs of living, caregiver costs, and the age and education of the workers,

⁶⁰ U.S. Department of Labor (2013). Wage and Hour Division. Retrieved July 31, 2013 from <http://www.dol.gov/whd/minwage/q-a.htm>

⁶¹ U.S. Department of Labor (2013). Making Work Pay: The Case for Raising the Minimum Wage. Retrieved July 31, 2013, from <http://www.dol.gov/dol/aboutdol/history/reich/reports/pay.htm>

⁶² National Women’s Law Center (July 2013). Fair Pay for Women Requires Increasing the Minimum Wage and Tipped Minimum Wage. Retrieved July 31, 2013 from <http://www.nwlc.org/resource/fair-pay-women-requires-increasing-minimum-wage-and-tipped-minimum-wage>

⁶³ Restaurant Opportunities Centers United (2013). The Third Shift. Retrieved August 1, 2013 from <http://rocunited.org/the-third-shift/>

⁶⁴ Ibid.

⁶⁵ Ibid.

⁶⁶ Schmitt, J., and Jones, J. (2012). Low-wage Workers are older and Better Educated than Ever. CEPR. Retrieved August 3, 2013 from <http://www.cepr.net/documents/publications/min-wage3-2012-04.pdf>

will allow working women to close the wage gap, will allow them a better chance to escape poverty, and will improve their ability to control their own work and life decisions.

In February 2013, President Obama proposed increasing the federal minimum wage level to \$9.00 from \$7.25, and to index it to inflation. Senators Tom Harkin (D-Iowa) and Representative George Miller (D-CA) proposed going further and increasing the wage in increments up to \$10.10. This increase would directly and disproportionately affect women, who comprise 56% of the beneficiaries, and parents who make up over one quarter of beneficiaries.⁶⁷ Importantly, the bill would also raise the tipped minimum from \$2.13 to 70% of minimum wage, taking the critical step for protecting America's most vulnerable working women in tipped employment.

While this proposed increase and indexation is just a first step towards improving the conditions of low wage working women, it is nevertheless an important step for helping women to improve their economic mobility and parity.

c. Pregnancy Discrimination and Disparities in Family Leave Policies

Women in the workforce are constantly faced with balancing work and caring for children and, often, other family members. Pregnancy can often be a disadvantage for working women, and the struggle does not end with the birth of a child. Although it is true that gender roles are now beginning to change, with an increase in men staying home to help raise children, the number of women caregivers is disproportionately high, with 59-75% of caregivers being women.⁶⁸

The federal Pregnancy Discrimination Act (PDA) establishes rights for pregnant women by prohibiting discrimination on the basis of pregnancy and requires employers to give the same benefits to pregnant women as they do to other disabled employees. Under the PDA, employers with 15 or more employees cannot discharge, fail to hire, or discriminate in compensation, promotion, or terms, conditions, or privileges of employment on the basis of pregnancy, childbirth, or related medical conditions.⁶⁹

The Americans with Disabilities Act (ADA) approaches the problem differently. Although pregnancy itself is not labeled a disability under the ADA, "pregnancy related impairments" are, if they limit a major life activity.⁷⁰ The law requires employers to make accommodations for employees with disabilities as long as they can be made without undue hardship to the employer. However, because pregnancy is not technically listed as a disability, many employers dismiss the ADA when it comes to cases of pregnancy. Employers expect pregnant workers to continue on with their work, regardless of their pregnancy. If they are not able to keep up with the

⁶⁷ Cooper, D. and Hall, D. (2013). Raising the Federal Minimum Wage to \$10.10 would give working families, and the overall economy, a much-needed boost. EPI. Retrieved August 3, 2013 from <http://www.epi.org/files/2013/bp357--federal-minimum-wage-increase.pdf>

⁶⁸ National Center on Caregiving at Family Caregiver Alliance (May 2003). Women and Caregiving: Facts and Figures. Retrieved August 5, 2013 from http://www.caregiver.org/caregiver/jsp/content_node.jsp?nodeid=892

⁶⁹ Legal Momentum (2013). Federal Laws Related to Pregnancy, Leave and Breastfeeding Right in the Workplace. Retrieved August 5, 2013 from <http://www.legalmomentum.org/federal-laws-related-pregnancy-leave-and-breastfeeding-rights-workplace>

⁷⁰ National Women's Law Center (2013). It Shouldn't be a Heavy Lift: Fair Treatment for Pregnant Workers. Retrieved August 5, 2013 from http://www.nwlc.org/sites/default/files/pdfs/pregnant_workers.pdf

expectations of the work, pregnant employees are sometimes fired, particularly low-wage earners.⁷¹ “On May 8, 2012, the federal Pregnant Workers Fairness Act (“PWFA”) was introduced by U.S. Representative Jerrold Nadler (NY). The bill would expressly require employers to provide pregnant workers with reasonable accommodations so they can continue working, unless doing so would cause an undue hardship,” and should be adopted.⁷²

The United States has one of the worst records for providing leave for workers with families in the world. Today, it is one of only four countries in the world—along with Liberia, Sierra Leone, and Papua New Guinea—that does not provide workers the right to paid maternity leave, as guaranteed by CEDAW.⁷³ While there are no regulations establishing the right of paid family leave in the United States, the Family and Medical Leave Act (FMLA), which celebrated its 20th anniversary in February 2013, entitles workers to take up to 12 weeks of unpaid leave to care for a newborn.^{74,75} Pregnancy and prenatal care also fall under the category of a “serious health condition.”⁷⁶ If this serious health condition limits an employee’s ability to do work, she has the right to take medical leave. In fact, the law states that a pregnant woman “may take leave intermittently for prenatal examinations or for her own [incapacitating] condition, such as for periods of severe morning sickness.”⁷⁷

Significantly, only about half of working mothers in the United States even qualify for the 12 weeks of unpaid job-protected leave provided by the FMLA, and only the states of New Jersey, Rhode Island, and California have paid leave programs.⁷⁸

While the FMLA is beneficial, it also poses a dilemma for some women. Often, employers require a woman to take her 12 weeks of medical leave instead of making accommodations necessary to help her continue working. This means women often use up their medical leave before their babies are born, “leaving them with no job-protected time off from work for

⁷¹ Bornstein, S. (2011). Poor, Pregnant, and Fired: Caregiver Discrimination Against Low-Wage Workers. Center for WorkLife Law University of California, Hastings College of the Law. Retrieved September 4, 2013 from <http://worklifelaw.org/pubs/PoorPregnantAndFired.pdf>

⁷² Farrell, N., Dolkas, J., and Munro, M. (2011). Why Federal Law Should Require the Reasonable Accommodation of Pregnant Workers, Equal Rights Advocates. Retrieved September 8, 2013 from <http://www.equalrights.org/wp-content/uploads/2013/02/Expecting-A-Baby-Not-A-Lay-Off-Why-Federal-Law-Should-Require-the-Reasonable-Accommodation-of-Pregnant-Workers.pdf>

⁷³ Glynn, S. J., and Farrell, J. (2013). The United States Needs to Guarantee Paid Maternity Leave. Center for American Progress. Retrieved August 5, 2013 from <http://www.americanprogress.org/issues/labor/news/2013/03/08/55683/the-united-states-needs-to-guarantee-paid-maternity-leave/>

⁷⁴ Legal Aid Society Employment Law Center (2013). Pregnancy Discrimination and Pregnancy Leave. Retrieved August 6, 2013 from <http://www.las-elc.org/fact-sheets/pregnancy-discrimination-and-pregnancy-leave>

⁷⁵ United States Department of Labor (2013). Work Hours. Retrieved August 6, 2013 from http://www.dol.gov/dol/topic/workhours/vacation_leave.htm

⁷⁶ United States Department of Labor (2013). Family and Medical Leave Act. Retrieved August 6, 2013 from <http://www.dol.gov/whd/fmla/>

⁷⁷ National Women’s Law Center (2013). It Shouldn’t be a Heavy Lift: Fair Treatment for Pregnant Workers. Retrieved August 5, 2013 from http://www.nwlc.org/sites/default/files/pdfs/pregnant_workers.pdf

⁷⁸ Glynn, S.J., and Farrell, J. (2013) The United States Needs to Guarantee Paid Maternity Leave. Center for American Progress. Retrieved August 20, 2013 from <http://www.americanprogress.org/issues/labor/news/2013/03/08/55683/the-united-states-needs-to-guarantee-paid-maternity-leave/>

childbirth and care for their newborns.”⁷⁹ Additionally, despite the demographic changes, the United States’ federal work-life balance policies have not changed since 1993, when the FMLA was passed.

The example above is not the only example of the workers’ reality differing from the rules and regulations outlined in the laws listed above. Many pregnant workers get fired upon requesting accommodations and others believe they must quit if their request for accommodations is denied, resulting in ineligibility for unemployment insurance due to their “voluntary quitting.”⁸⁰

These challenges disproportionately affect women working in low wage or traditionally male jobs that require heavy lifting and other physically demanding tasks. The burden of these jobs tends to fall on immigrants or women of color, leaving this population at a greater disadvantage than their white counterparts when they become pregnant.⁸¹ While some women, generally those in white collar jobs, will be able to continue working throughout their pregnancy, these women often cannot. In fact, research shows that physically demanding work carries increased risk of preterm births and low birth weight.⁸² Despite health hazards, low-wage workers cannot afford to risk losing their jobs by asking for accommodations, especially during a time when they are expecting to have to provide for a child. These differences serve to increase the intra-gender inequality gap, and often leave low wage women either stuck in jobs that lead to health problems or out of work.

Fortunately, in 2012, the Equal Employment Opportunity Commission specified “accommodating pregnancy related limitations under the Americans with Disabilities Act Amendments Act and the Pregnancy Discrimination Act” as a national enforcement priority through 2016.⁸³ This recognition is a first step on the path to protect pregnant women around the country.

It is vital that strong, clear, standardized guidance be established as to the legal guidelines employers are expected to follow regarding pregnant workers. The work cannot stop there. Most believe that the United States is not doing enough to support its working women and families: 72% of polled individuals supported expanding paid family, maternity, and sick leave for working families.⁸⁴ Furthermore, paid family leave will play a significant role in helping to close the leadership gap that persists for many reasons, including the loss of seniority and decision many women make to leave the workplace due to lack of paid leave and low cost, high quality child care. The U.S. Congress should pass the Pregnant Workers Fairness Act to ensure that pregnant women get the basic accommodations necessary for an equal opportunity to work.

There is the public will for stronger support for families; there now needs to be the political will to establish the necessary legal protections.

⁷⁹ Ibid, 17.

⁸⁰ Ibid, 10.

⁸¹ Ibid, 7.

⁸² Ibid, 5.

⁸³ Ibid, 20.

⁸⁴ Women’s Voices Women Vote (2013). American Voters Overwhelmingly Support Economic Proposals that Aid Women. Retrieved August 3, 2013 from <http://www.wvovaf.org/news/american-voters-overwhelmingly-support-economic-proposals-that-aid-women/>

d. Work-Life Balance: Inequitable Access to Flexibility and Child Care

i. Flexibility

Despite the reality that 58% of women are participating in the labor force, and many of these women are parents or caregivers, work life balance and the right to request flexibility is not feasible for most American workers.⁸⁵ Family friendly workplaces, or 21st century workplaces that recognize and honor changing demographics and responsibilities, continue to be rare despite laws such as the Americans with Disabilities Act, the Title VII of the Civil Rights Act of 1964, and the Fair Labor Standards Act.

Even in workplaces where work-life policies exist, the “flexibility stigma” prevents many workers from requesting flexible work schedules or accommodations, for fear of gender stereotyping and retaliation that often occurs despite American workplace laws which prohibit such discrimination.⁸⁶

While all workers deserve the right to balance their work and family responsibilities, due to enduring social expectations regarding gender norms and caregiver responsibilities, working mothers and women in caregiver roles suffer disproportionately from inflexible work schedules and the belief among employers that women with children or other family responsibilities are subpar or disinterested in their work. Such disparities seriously impact a woman’s right to discrimination-free employment, and often lead to caregiver discrimination in hiring, talent development, and promoting.

To ensure that more workers have an opportunity to request flexibility without fear of reprisal and with the understanding that their request will not be turned down for non-legitimate business reasons, the United States should pass the pending Flexibility for Working Families Act to ensure all workers have a more equal playing field for meeting the demand of work and families.⁸⁷ Similar bills have been previously unsuccessful at the federal level. Other right to request policies have been enacted with great success in the United Kingdom, Australia, New Zealand, and Canada, and also in Vermont. In San Francisco, a similar piece of legislation called the Family Friendly Workplace Ordinance is pending.

The next step after flexibility is predictability, which is an incredibly important consideration for working mothers trying to keep their jobs while taking care of their families.

⁸⁵ U.S. Bureau of Labor Statistics (2013). Women in the Labor Force: A Databook. Retrieved August 19, 2013 from <http://www.bls.gov/cps/wlf-databook-2012.pdf>

⁸⁶ Bornstein, S. (2013). The Legal and Policy Implications of the Flexibility Stigma. *Journal of Social Issues*. Vol. 69, No. 2.

⁸⁷ In the 112th Congress, a Senator and Representative introduced identical legislation (S. 2142/H.R. 4106) titled, “The Working Families Flexibility Act.”

ii. Affordable and Quality Child Care

Affordable, quality, and accessible child care and pre-kindergarten is absolutely critical for ensuring equal opportunities in employment and advancement for women, since high cost, high quality child care and the lack of decent alternatives means many working mothers are left to choose between leaving the workforce to care for a child or turning to an alternative, low quality child care.⁸⁸

A report released this year by the Center for American Progress outlined the reasons why expanding pre-K access would benefit mothers and parents, including:⁸⁹

- Since only 60% of kindergarten programs have full-day schedules, increased funding of such programs would better accommodate parents' work schedules, making it less challenging for new parents to decide between staying home and returning to work
- Staying at home is a choice only for some, and many low income mothers are forced to go back to work to maintain the family income. So additional funding for child care would help reduce a parent's likelihood of needing public assistance
- Allowing women to continue to work after having a child would help mitigate the wage gap.

In February 2013, President Obama unveiled a plan for expanding pre-k and early childhood education programs to ensure universal access. When this critical proposal hit political roadblocks, the administration has looked into alternative methods for putting the program into action. Universal child care and pre-k is necessary for the uplifting of the American economy and our future workforce, but it is also just as critical for working mothers and parents. The recent automatic spending cuts, known as sequestration, included a drastic 5% reduction in funding for the Head Start program, resulting in the loss of access to programs for 51,299 low-income children.⁹⁰ The administration should find a way to ensure that this proposal becomes a reality, or that an alternative gets put forward that will not force mothers to leave the workforce due to fear of low quality care for their children. Subsidized and accessible child care is critical for ensuring working women full and equal opportunities in employment.

V. Questions

It is recommended that the Human Rights Committee ask the U.S. delegation to provide an update on:

- What measures the United States is taking to ensure equality for women in the workplace, and in particular, what the United States is doing to address persistent

⁸⁸ Glynn, S. J., Farrell, J., Wu, N. (2013) The Importance of Preschool and Child Care for Working Mothers. Center for American Progress. Retrieved by August 19, 2013 from <http://www.americanprogress.org/issues/education/report/2013/05/08/62519/the-importance-of-preschool-and-child-care-for-working-mothers/>

⁸⁹ Ibid.

⁹⁰ National Head Start Association (2013). Head Start Fact Sheet: National Sequestration Impact. Retrieved September 4, 2013 from <http://my.nhsa.org/download/states/sequestercuts/National%20Summary%20FS.pdf>

employment-related problems of sexual harassment, unequal pay for equal work, pregnancy discrimination, motherhood penalties, insufficient family leave policies, and the need for flexible work schedules

- What role the federal government can play in encouraging policies and practices in the private sector to decrease the incidence of discrimination and encourage a safe and retaliation-free route for reporting abuse at work.

VI. Recommendations:

To ensure that women are free to work and apply for employment without discrimination, the U.S. federal government should:

- Continue to support the critical work of the U.S. Department of Labor Women’s Bureau and the White House Council on Women and Girls, which is coordinating the efforts around and bringing much needed attention to the inequities facing working women and future working women
- Research into potential avenues for ensuring paid maternity and paternity leave to American workers, like all other democratic, more economically developed countries (MEDC)
- Consider reauthorizing the Child Care and Development Block Grant, passing the pre-kindergarten initiative in Obama’s budget, or instituting some other child care initiatives in order to allow more mothers to return to work, if needed, to support themselves and their families
- Ensure all workers can meet the demands of work and family life by adopting a federal right to request flexibility, known as the Flexibility for Working Families Act, a version of which has already been passed in the state of Vermont and is pending in San Francisco
- Pass the Pregnant Workers Fairness Act, reintroduced in Congress in 2012, to ensure that pregnant women get the basic accommodations necessary for an equal opportunity to work
- Approve the Paycheck Fairness Act, which would require employers to prove that wage differences are related to legitimate business specifications and would prohibit retaliation against employees who file wage discrimination claims and allow victims to seek back and punitive damages for lost wages
- Pass the Fair Minimum Wage Act of 2013 to ensure that low wage women workers are able to earn a living wage
- Pass the Employment Non-Discrimination Act (ENDA) to ensure equal protection for LGBT workers
- Amend Title VII of the Civil Rights Act of 1964 to adopt a broader definition of “supervisors” to hold employers accountable for preventing and correcting sexual harassment in the workplace.